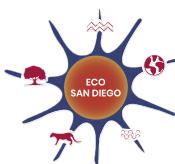




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CLIMATE ACTION

October 22, 2025

Members of the Governing Board
San Diego County Air Pollution Control District
c/o Clerk of the Board
1600 Pacific Highway, Room 402
San Diego, CA 92101

Submitted via email

RE: Request to Direct Staff to Begin Rulemaking for an Indirect Source Rule to Improve Air Quality

Dear Members of the Governing Board,

I am writing to respectfully urge the San Diego County Air Pollution Control District (SDAPCD) Governing Board to direct staff to initiate a rulemaking process for a Warehouse Indirect Source Rule (ISR) for San Diego County this year. A Warehouse ISR is urgently needed to reduce air pollution associated with our sprawling warehouse industry.

Time is of the essence, given SDAPCD's expansive authority to develop such regulations, over twenty years of experience with ISR programs at other air districts in California, San Diego's status as one of the most ozone-polluted regions in the U.S., its designation as a severe nonattainment area for the 2008 and 2015 federal 8-hour ozone standards and a nonattainment area for state ozone standards, the growing difficulty for air districts to rely on robust state mobile source regulations to achieve required emissions reductions, and the continued struggle of San Diego's disadvantaged communities to achieve fair treatment under existing environmental laws.

Communities along San Diego's portside and international border—designated under AB 617 as priority environmental justice areas—suffer disproportionately from toxic air emissions due to their proximity to the Port of San Diego, international border crossings, intermodal railyards, and major trucking corridors. These sources contribute to significant concentrations of diesel particulate matter (DPM), nitrogen oxides (NOx), and ozone precursors.

According to CalEnviroScreen version 4.0, neighborhoods such as Barrio Logan, Logan Heights, San Ysidro, and Otay Mesa are in the 90th–100th percentile statewide for cumulative pollution burdens. Recent data from the California Air Resources Board (CARB) show that San Diego County continues to violate state and federal ozone standards, with mobile sources accounting for more than **70% of NOx emissions** in the region.

AB 617 community air monitoring data for Portside Environmental Justice Neighborhoods show elevated levels of black carbon and ultrafine particles—pollutants strongly linked to diesel emissions. These exposures lead to increased asthma rates, cardiovascular disease, and other adverse health outcomes. In San Diego's Portside communities, 84% of cancer risk from air pollution is attributable to DPM emissions from the Port of San Diego, freight and rail facilities that support the Port, and industrial facilities.¹ The Community is exposed to disproportionately high levels of DPM due to proximity to intersecting highways that see high truck traffic.² As a result of cumulative air pollution exposure, the Community experiences some of the highest rates of asthma and cancer in the region. Emergency room visits for childhood asthma in ZIP Code 92113 is nearly twice as high as the county average.³ Children in this and other disadvantaged communities also have among the highest chronic school absenteeism rates in the county.⁴ Among communities along San Diego's international border, PM_{2.5} and traffic burden in San Ysidro are 95% and 100% higher than in other California census tracts according to CalEnviroScreen 4.0.

Over one million heavy duty trucks are processed at the Otay Mesa Port of Entry before they travel along the 905 Trade Corridor – contributing to elevated air concentrations of DPM, PM_{2.5}, and NOx emissions within residential, commercial, and sensitive locations.⁵ Otay Mesa's warehouse footprint has expanded by 45% since 2019 alone.⁶ Barrio Logan has 220 warehouses across roughly 5 square miles. West National City has 201 warehouses within its borders. Roughly ³/₄ of these warehouses are smaller than 20,000 square feet; they should appear in any consideration of the utility and cost-effectiveness of an ISR. Sensitive land uses face even greater impacts of warehousing and goods movement; Barrio Senior Villas, for example, is home to residents over the age of 75 and located within 1000 feet of over 35 warehouses.

¹ California Air Resources Board, Preliminary Draft Work for Action A3 Discussion – San Diego Portside Community Steering Committee Meeting Presentation, slide 14 (2021), <https://www.sdapcd.org/content/dam/sdapcd/documents/capp/meetings/portside-csc/031621/031621-V-C-ARB-Prelim-Air-Toxics-Risk-Modeling-Results.pdf>.

² San Diego Air Pollution Control District, Community Emissions Reduction Plan - Portside Environmental Justice Neighborhoods (2021), pg. 34, <https://www.sdapcd.org/content/dam/sdapcd/documents/capp/cerp/Portside-Environmental-Justice-CERP-July-2021.pdf>.

³ In the 92113 zip code the rate is ~90 visits for childhood asthma per 10,000 residents. The county average is ~48 visits per 10,000 residents. California's Department of Health Care Access and Information (HCAI) 2022 Patient Discharge and Emergency Department Databases.

⁴ Seven of the 15 San Diego Unified schools with the highest chronic absenteeism districtwide are in the 92113 ZIP code. Chronic absenteeism is when a student misses 10 percent or more of instructional days in a year. Jakob McWhinney, *Of the 15 San Diego Unified Schools with the Most Chronic Absenteeism, 14 Are South of I-8*, Voice of San Diego, Mar. 13, 2023, <https://voiceofsandiego.org/2023/03/13/of-the-15-san-diego-unified-schools-with-the-most-chronic-absenteeism-14-are-south-of-i-8/>.

⁵ U.S. General Services Administration, Otay Mesa Land Port of Entry, <https://www.gsa.gov/about-us/gsa-regions/region-9-pacific-rim/land-ports-of-entry/otay-mesa-land-port-of-entry>.

⁶ IPG, Otay Mesa, San Diego: Emerging Leader in Industrial Markets (2024), <https://ipgsf.com/otay-mesa-emerging-leader-industrial-market/>.

In light of these circumstances, SDAPCD is legally obligated to adopt an ISR program. The District is required to adopt rules that are necessary for the County to achieve state and federal air quality standards. Such rules must, *inter alia*, “reduce or mitigate emissions from indirect and areawide sources of air pollution.”⁷ SDAPCD has over twenty years of experience to draw from, as other California air districts have designed and implemented a range of ISR programs for years—including Rule 2305, adopted in 2021, by the South Coast Air Quality Management District (SCAQMD). Rule 2305 requires warehouses 100,000 square feet and larger to mitigate air pollution associated with their operations by earning points through either a combination of compliance measures, completing actions in a custom site-specific plan, or paying a mitigation fee.

SCAQMD’s innovative rule is expected to reduce regional smog-forming emissions by **10–15 percent** by 2031.⁸ It sets a precedent for San Diego County to follow. Prior to development of Rule 2305, SCAQMD attempted a voluntary incentive program for over a year but achieved little success.⁹ According to updated ISR emission reduction estimates presented to the public by SDAPCD in April 2025, an ISR for facilities over 50,000 square feet is expected to reduce regional NO_x emissions by as much as 36.1 tons per year, and PM_{2.5} emissions by as much as 0.26 tons per year. These estimates notably omit hundreds of warehouses that contribute to the region’s nonattainment for ozone and intensive pollution in disadvantaged communities.¹⁰

Medium- and heavy-duty trucks alone account for only 1% of all vehicles in San Diego County, but emit 13% of the diesel particulate matter (DPM) in the region, a major component of fine particulate matter that contributes to lung cancer, asthma, and other health outcomes. Moreover, medium- and heavy-duty trucks emit 15% of all nitrogen oxides (NO_x), a precursor to regional ozone and particulate matter pollution that contribute to respiratory and other illnesses.¹¹

San Diego has made commendable progress through collaborative efforts and voluntary programs to try to rein in its considerable air quality challenges. Yet the scale and urgency of our air pollution crisis—particularly in AB 617 communities—warrants a strong regulatory signal. An indirect source rule would provide the District the tools

⁷ Cal. Health & Safety Code §§ 40000, 40716.

⁸ See South Coast Air Quality Management District, *South Coast AQMD Issues Violations for Warehouses in Noncompliance with Rule 2305* (2024), <https://www.aqmd.gov/home/research/pubs-docs-reports/newsletters/jan-feb-2024/warehouse-compliance>.

⁹ South Coast Air Quality Management District, Potential Strategies for Facility-Based Mobile Source Measures Adopted in 2016 AQMP (2018), <https://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2018/2018-may4-032.pdf>.

¹⁰ San Diego Air Pollution Control District, Warehouse Indirect Source Rule (ISR) Framework Supplement (2025), pg. 46, Table 8, <https://www.sdapcd.org/content/dam/sdapcd/documents/rules/warehouse-work-group/april-2025/isr-framework-supplement.pdf>.

¹¹ San Diego Air Pollution Control District, Options and Considerations for Reducing Indirect Source Emissions at Warehouses, Distribution Centers, and Ports (2023), pg. 2, <https://www.sdapcd.org/content/dam/sdapcd/documents/rules/warehouse-work-group/references/isr-framework-english.pdf>.

necessary to hold indirect and areawide sources of pollution accountable and encourage a transition to cleaner fleets, equipment, and infrastructure. It will align San Diego County with California's robust climate, environmental justice, and clean energy policy goals and requirements.

Notably, San Diego's AB 617 CERPs (Community Emissions Reduction Plans) have yet to improve air quality near indirect sources of pollution, despite their commitment to, for example, "reduce emissions from heavy-duty and medium-duty trucks servicing indirect sources by 100% 5 years in advance of regulatory requirements." We therefore ask that the Governing Board:

1. **Direct staff to commence development of an Indirect Source Rule**, including all relevant and required scoping, public involvement, and other requirements.
2. **Evaluate existing ISR frameworks**, including but not limited to SCAQMD's Rule 2305, for applicability to San Diego's land use, transportation, and regional and localized air quality context.
3. **Prioritize reducing disparities, including air quality and public health, within and among communities most impacted by freight and transportation-related emissions**, including those within AB 617 Portside and International Border Communities.

While not adequately reflected in the Framework Supplement, a well-crafted Warehouse Indirect Source Rule that aligns with San Diego County's unique land use and transportation context will yield substantial emissions reductions. District staff must consider compliance options that address the unique mix of warehouse buildout and activity in the County. For example, during workgroup meetings, staff identified yard trucks are less widely used at warehouses in San Diego County than in other regions. This highlights the need for staff to develop additional compliance options for a Warehouse ISR that may lead to greater emissions reductions than forecast in the Framework Supplement. Additional compliance options could include, among others:

- Purchase or use of zero-emission transport refrigeration units. For example, cold storage facilities comprise 1,009,066 square feet of total warehouse building floor area in the County.¹² Data on warehouse and distribution centers in Southern California show that refrigeration/cold storage facilities are more likely to be located in disadvantaged communities.¹³
- Contracting with third-party charging providers. Warehouse operators in the South Coast cannot earn points under Rule 2305's compliance menu for contracting with third-party charging providers to install charging stations. This compliance option would encourage greater investment in much-needed charging infrastructure in the region.

¹² San Diego Air Pollution Control District, Warehouse ISR Framework Supplement, pg. 24.

¹³ Miguel Jaller et al., Distribution facilities in California: A dynamic landscape and equity considerations; 15 J. of Transp. & Land Use 755, 771 (2022).

- Development of a zero-emission pilot program, funded by mitigation fees, to support zero-emission projects for warehouses that are not covered under an ISR and located in disadvantaged communities.
- All-electric buildings with no onsite fossil fuel infrastructure (e.g. gas connections or backup generators).
- Direct purchase of offsite mitigation or contribution to an air quality mitigation bank.
- Adding battery capacity to onsite solar systems.
- Purchase of all-electric landscaping equipment.

San Diego has a historic opportunity to lead in ensuring healthy air and an equitable future for all people, including those who live in frontline communities. Thank you for your leadership and commitment to cleaner air in San Diego.

Sincerely,

Charles Rilli
Deputy Chapter Director
Sierra Club San Diego

Franco Garcia
Executive Director
Environmental Health Coalition

Anthony Dang
Policy and Community Outreach Manager
Climate Action Campaign

Regina Hsu
Senior Attorney
Earthjustice

Ramon Chairez
Director of Education & Environmental Advocacy
Un Mar De Colores

Phillip Musegaas
Executive Director
San Diego Coastkeeper

Gregg Macey
Director
Center for Land, Environment and NR
UC Irvine School of Law

Christopher Roberts
Transportation Team Co-lead
SanDiego 350

Pamela Heatherington
Executive Director
Environmental Center of San Diego

Sarah Davidson
Clean Border Water Now Manager
Surfrider San Diego

Joe Houde
Chair
North County Climate Change Alliance



October 22, 2025

Members of the Governing Board
San Diego County Air Pollution Control District
10124 Old Grove Road
San Diego, CA 92131
APCDPublicComment@sdapcd.org

Submitted via email

RE: APCD Authority to Pursue Indirect Source Regulation

Dear Members of the Governing Board,

We submit these comments to provide information regarding the San Diego County Air Pollution Control District's legal authority to control pollution from indirect sources. Importantly, the Air District possesses broad authority to adopt regulations to control pollution from indirect sources. In initiating a rulemaking, the APCD would join several other local air districts in California that have utilized this regulatory authority for decades. Moreover, considering the County's nonattainment status, state law in fact requires the Air District is required to adopt indirect source controls to fulfill its legal obligations under state law. Therefore, we urge the Governing Board to direct staff to commence a rulemaking process for a Warehouse Indirect Source Rule for San Diego County this year.

I. The APCD has broad legal authority to devise indirect source programs.

California law provides air districts with expansive authority to devise regulations, including indirect source regulations. Under the California Health & Safety Code, the APCD has "primary responsibility for control of air pollution from all sources, other than emissions from motor vehicles" within San Diego County.¹ Furthermore, the District is required to adopt and enforce regulations necessary for the County to achieve and maintain state and federal air quality standards, including regulations that "reduce or mitigate emissions from indirect and areawide sources of air pollution."² This broad language does not prescribe significant limits on air district authority to regulate indirect sources.

Through the Warehouse Working Group process, the APCD has been tracking implementation of the South Coast Air Quality Management District's Warehouse Indirect Source Rule (Rule 2305, adopted in 2021) and is considering the benefits of adopting a similar indirect source regulation in San Diego County. But the South Coast's Rule 2305 is not the first indirect source rule in California. In fact, local air districts in California have utilized indirect source regulations

¹ Cal. Health & Saf. Code § 39002; *Cal. Building Indus. Ass'n v. San Joaquin Valley APCD*, 100 Cal. Rptr. 3d 204, 209 (2009).

² Cal. Health & Saf. Code §§ 40000, 40716.

for decades. The table below provides a brief description of indirect source rules adopted by various air districts in California.

Air District	Indirect Source Regulation	Adoption Date
Colusa County	<u>Rule 510</u> : Imposes building permit fees for residential, commercial, and industrial development. Excess fees used to mitigate air quality impacts.	1991
Mendocino County	<u>Regulation 1</u> : Requires large development projects that indirectly results in or is projected to result in excess unmitigated emissions to document and implement mitigation measures. Authority to Construct permit is required if applicant is unwilling to implement mitigation measures or mitigated emissions still exceed thresholds.	2003
San Joaquin Valley	<u>Rule 9510</u> : Sets emission reduction targets for large new development, redevelopment, dan or transportation/transit projects, which can be achieved through on-site mitigation or payment of off-site mitigation fees	2005
Imperial County	<u>Rule 310</u> : Requires payment of operational development fee, emission reduction project, or emissions review for new commercial and residential development projects	2007
Tehama County	<u>Rule 2:11D</u> : Requires developers of new commercial and residential development projects to pay an Indirect Source Fee, provide on-site or off-site mitigation through an Alternative Emission Reduction Plan, or a combination of both.	2010
South Coast	<u>Rule 2305</u> : Requires operators of warehouses over 100,000 square feet to earn a certain number of points every year (calculated based on number of annual truck trips to/from the facility). Points can be earned through (1) completing any combination of actions in a menu of compliance options specified in the rule; (2) completing actions in a custom site-specific compliance plan approved by the district; or (3) paying a mitigation fee.	2021

As California law does not specify how an air district may regulate indirect sources, the regulatory frameworks employed by each district varies. For example, the South Coast Air Quality Management District’s Warehouse Indirect Source Rule (Rule 2305), adopted in March

2021, provides a more comprehensive regulatory regime to incentivize warehouse owners and operators to make investments that will clean up operations.

II. Indirect source rules in California have routinely been upheld by courts.

As noted above, indirect source rules have been in place in various regions of California for decades and air districts have employed different approaches. Two of these rules – the San Joaquin Valley APCD’s Rule 9510 and the South Coast AQMD’s Rule 2305 – have faced legal challenges from industry opponents that were ultimately unsuccessful.³

Specifically, federal courts have thoroughly rejected arguments from industry opponents that indirect source regulations that set emission thresholds for facilities or require facilities to take actions to reduce emissions are preempted by various federal statutes.⁴ These decisions from the Central District of California and the Ninth Circuit affirm local air district authority to adopt policies to combat increasing emissions from pollution hotspots, such as new development projects or freight hubs.

The indirect source rules adopted by other air districts, including the South Coast Warehouse Indirect Source Rule, therefore provide a sound regulatory framework that the APCD can adapt for San Diego County. As the APCD has been using the South Coast Warehouse Indirect Source Rule as a model in its Warehouse Working Group, please find in Attachment 1 the decision upholding that regulation for reference.

III. APCD has a legal obligation under state law to adopt indirect source controls.

While state law does not dictate how an air district may regulate indirect sources, the APCD may be legally obligated to adopt indirect source controls given the County’s air quality challenges. San Diego County is in severe nonattainment of the 2008 and 2015 federal 8-hour ozone standards and is also designated as a nonattainment area for state ozone standards.⁵ According to the American Lung Association’s 2025 State of the Air Report, the San Diego region ranks as the eighth most ozone-polluted metropolitan area in the country.⁶

³ Both the San Joaquin Valley Air Pollution Control District and South Coast Air Quality Management District were joined by nongovernmental organizations that intervened to defend the indirect source rules. In addition, the California Attorney General submitted an amicus brief in support of the San Joaquin Valley Air Pollution Control District in the Ninth Circuit and the California Attorney General and California Air Resources Board intervened in defense of the South Coast indirect source rule.

⁴ *Nat’l Ass’n of Home Builders v. San Joaquin Valley Air Pollution Control Dist.*, 627 F.3d 730 (9th Cir. 2010) (holding that San Joaquin Valley APCD Rule 9510 is an indirect source review program and not preempted by the section 209(e) of the federal Clean Air Act); *Cal. Trucking Ass’n v. South Coast Air Quality Mgmt. Dist.*, No. CV21-06341 JAK, 2023 WL 9622548 (C.D. Cal. Dec. 14, 2023) (finding South Coast Warehouse Indirect Source Rule is not preempted by the federal Clean Air Act, Airline Deregulation Act, or Federal Aviation Administration Authorization Act).

⁵ California Air Resources Board, Staff Report – CARB Review of the 2020 Plan for Attaining the National Ambient Air Quality Standards for Ozone in San Diego County, at 3 (2020) [hereinafter San Diego 2020 Ozone Plan]; San Diego County Air Pollution Control District, 2022 Revision of the Regional Air Quality Strategy, at 3 (2022).

⁶ American Lung Association, 2025 State of the Air Report Card: San Diego, <https://www.lung.org/research/sota/city-rankings/msas/san-diego-chula-vista-carlsbad-ca/> [last accessed Sept. 23, 2025].

Table 2
State and National Air Quality Standards and Attainment Status

Pollutant	Averaging Time	Design Value (2021)	California Standard (CAAQS)	CAAQS Attainment Status	National Standard (NAAQS)	NAAQS Attainment Status
Ozone (O ₃)	1-hour	0.102 ppm	0.09 ppm	Nonattainment	0.12 ppm	Attainment
	8-hour	0.078 ppm	0.070 ppm	Nonattainment	0.08 ppm	Attainment
	8-hour				0.075 ppm	Nonattainment
	8-hour				0.070 ppm	Nonattainment

Under state law, air districts that have moderate air pollution such as San Diego County must comply with additional requirements in developing plans to achieve and maintain state ambient air quality standards.⁷ More specifically, California law directs each district with moderate air pollution to include specific measures in its attainment plan, including “provisions to develop areawide source and indirect source control programs.”⁸ While the 2009, 2016, and 2022 Regional Air Quality Strategy make note of potential indirect source measures, the District has yet to take action to develop any indirect source regulation.

To attain the 2015 8-hour federal ozone standard (70 ppb, equivalent to the state ozone standard), the County’s 2020 Plan relies on CARB’s commitment to achieve 4 tons per day of nitrogen oxide emission reductions from several statewide mobile source regulations, including the Low NOx Standard and the Advanced Clean Trucks Regulation.⁹ In addition, the District committed to achieve an additional 1.7 tons per day of reductions in NOx emissions by 2032 to attain the 70 ppb standard.¹⁰ But attacks on California’s mobile source regulations this year mean that there is a shortfall in expected emission reductions needed for San Diego County to attain state and federal air quality standards. Now is the time for the APCD to use the regulatory tools it has available to continue progress towards attainment of air quality standards that ensures all people in San Diego County can breathe clean air.

As APCD has identified, a warehouse indirect source rule will bring important emission reductions enabling the region to meet state and federal air quality standards and reducing the disproportionate pollution burdens borne by our AB617 communities. Warehouses in the County are responsible for approximately 1,100 tons, or 4 percent, annual NOx emissions and 11 tons per year, or 4 percent, of yearly diesel particulate matter emissions.¹¹ The APCD’s initial estimates indicated that a local ISR could reduce NOx emissions by as much as 50 tons per year, and DPM emissions by as much as 0.27 tons per year.¹² Even the revised estimates released this April indicate that a local warehouse ISR could be expected to reduce total NOx emissions by as

⁷ Health & Saf. Code § 40918.

⁸ *Id.* § 40918(a)(4).

⁹ San Diego 2020 Ozone Plan, *supra* note 5, at 24 (2020).

¹⁰ *Id.* at 1.

¹¹ San Diego County Air Pollution Control District, Warehouse Working Group (WWG) Orientation Meeting September 25 presentation, Slide 19 (Sept. 25, 2023), <https://www.sdapcd.org/content/dam/sdapcd/documents/rules/warehouse-work-group/092523/presentation-092523.pdf>.

¹² San Diego County Air Pollution Control District, Options and Considerations for Reducing Indirect Source Emissions at Warehouses, Distribution Centers, and Ports, at 11 (2023).

much as 13 to 27 tons per year.¹³ These are emission reductions communities in San Diego County desperately need, and we urge the Board to direct staff to commence a rulemaking process to combat warehouse pollution in the region.

Thank you for your consideration of these comments, and we would welcome the opportunity to discuss further with you.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Hsu', written over a light gray rectangular background.

Regina Hsu
Earthjustice
rhsu@earthjustice.org

¹³ San Diego County Air Pollution Control District, Warehouse Indirect Source Rule (ISR) Framework Supplement, at 33 (2025).

ATTACHMENT 1